

IN THE MATTER OF THE ARBITRATION BETWEEN:

FRATERNAL ORDER OF POLICE,)	
LODGE NO. 5,)	
)	
)	<u>AAA Case No. 14 390 00266 11</u>
and)	[P/O Roxanne Billips–Discharge]
)	
)	
CITY OF PHILADELPHIA.)	

APPEARANCES

<i>For the Union:</i>	<i>Stephen J. Holroyd, Esquire</i>
	<i>Jennings Sigmond</i>

<i>For the Employer:</i>	<i>Cara E. Leheny, Esquire</i>
	<i>Assistant City Solicitor</i>

Arbitrator:	Charles D. Long, Jr., Esquire
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Date of Hearing:	November 30, 2011
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Date of Decision:	January 5, 2012
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BACKGROUND

The Grievant, former Police Officer Roxanne Billips (#5885), became a police officer with the City of Philadelphia on or about February 26, 1996. The Grievant was discharged effective February 7, 2011. The Statement of Charges Filed and Action Taken is set forth below, in its entirety:

ARTICLE I: Conduct Unbecoming an Officer

Section 1.12: Making a false statement in response to an Official Department investigation.

Specification: In that you made false statements during your interview with Internal Affairs concerning IA#08-1061. In your interviews with Lieutenant Logan, you stated that your son, M [REDACTED] B [REDACTED], does not reside at your residence at [REDACTED], nor has he lived at [REDACTED] since he was 18 or 19 years of age (approximately five or six years previously). When you were asked if M [REDACTED] B [REDACTED] had free access to [REDACTED], during the period of March 2008 through April 2008, you responded, "No, he did not have a key to come in and out of my residence. However, he had two siblings home at the time, who could have let him in without my knowledge." This is contradicted by the statements of Detective J [REDACTED] V [REDACTED], Officer R [REDACTED] G [REDACTED], and Officer A [REDACTED] R [REDACTED], who all stated they saw M [REDACTED] B [REDACTED] enter and leave the property at [REDACTED] freely; that he did not knock or have to be admitted, that he used a key and his car was parked there on several occasions. In addition, during the course of their surveillance the officers observed that you were inside the property while M [REDACTED] B [REDACTED] was at that location and conducted one narcotics sale and you left within approximately thirty seconds before B [REDACTED] came out of that property to conduct a second transaction.

ARTICLE I: Conduct Unbecoming an Officer

Section 1.25: Knowingly associates, fraternizes, or conducts business transactions at any time, or in any manner whatsoever, with known criminals or persons engaged in unlawful activities.

Specification: In that Internal Affairs investigation IAD#08-1061 determined that you were aware that your son, M [REDACTED] B [REDACTED], had free access to [REDACTED] and B [REDACTED] stated he lived there. M [REDACTED]

B■■■■' address on his driver's license is listed as ■■■■■ and a majority of B■■■■s arrests have been listed under that address. M■■■■ B■■■■ was observed entering the property using a key. Numerous narcotics purchases were made at that location by DEA and the DA's Office during their investigation. The surveillance by the DAO/DEA revealed that illegal narcotics purchase was made while you were at home and a second narcotics buy was made at ■■■■■ thirty seconds after you left your house. It should be noted that several neighbors cited heavy narcotics activity (sales) at your house. During the execution of Search Warrant #129566, a large amount of narcotics and drug packaging materials was found in common areas of your home. Weapons were also located and confiscated. Additional narcotics packaging materials approximately one month later, when Search Warrant #135907 and Arrest Warrant for F■■■■ M■■■■, another son, were executed by personnel from NEDD. During the search, the narcotics packaging paraphernalia items that were recovered from the china cabinet were in plain view, in that the china closet had glass doors. You were aware that both of your sons, M■■■■ B■■■■ and F■■■■ M■■■■, had criminal records that included narcotic sales. This current Internal Affairs investigation is the third one concerning the allegation of narcotics activity at your home.

ARTICLE I: Conduct Unbecoming an Officer

Section 1.75: Repeated violation of Departmental rules and regulations, and/or any other course of conduct indicating that a member has little or no regard for his./her responsibility as a member of the Police Department.

Specification: In that in 2005, your husband, O■■■■ R■■■■, notified the Internal Affairs Division that M■■■■ B■■■■, your son, was using your home at ■■■■■ to sell narcotics with your knowledge (IAD#05-1177). Mr. R■■■■ stated that he told you about B■■■■ activity and even gave you drugs that he found inside the residence. Mr. R■■■■ further stated that M■■■■ B■■■■ sold narcotics from your house even when you were home. Although at the time, Mr. R■■■■s allegations could not be proven and the allegations were classified as not sustained, subsequent incident/investigations (IAD #08-1061 and 08-1064) now lend credence to R■■■■s contentions. Surveillance conducted between 3/25/08 and 4/30/08 by the District Attorney's Office Dangerous Drug Offenders Unit (DAO) and the DEA revealed that \$1,050.00 worth of crack-cocaine was purchased from B■■■■ during six

transactions. The surveillance revealed that of the six transactions with Mr. B■■■■, three of the sales occurred in front of your residence, with one occurring at the front door of the house. This surveillance also revealed that you were at home in the residence during one of the transactions and were home as another was being arranged via cell phone call. Mr. R■■ had outlined the manner in which M■■■■ B■■■■ was conducting his narcotic sales, wherein B■■■■ would receive a telephone call and arrange for meetings, either at ■■■■■ or within close proximity. The DAO/DEA showed that M■■■■ B■■■■ has continued to use the same method to conduct drug sales. Additionally, the investigation revealed that several neighbors cited heavy narcotics activity (sales) at your home. During the initial investigation, IAD #05-1177, you denied any knowledge of drug sales from your residence and stated that M■■■■ B■■■■ did not live at ■■■■■. However, during the execution of Search Warrant #129566, a large amount of narcotics and packaging material was found in the common area of your home. Weapons were also located and confiscated. Approximately one month after this, additional narcotics packaging materials were found within plain view in a china cabinet when Search Warrant #135907 and Arrest Warrant for your son, F■■■■ M■■■■, was executed by NEDD. When interviewed in subsequent Internal Affairs investigations, you denied any knowledge of the drug sales or narcotics in your house and upon the information revealed during this investigation, the fact that both your sons have criminal records which includes sales of narcotics, as well as information provided to you during previous Internal Affairs investigations, you knew or should have known that narcotics activity was taking place in and around your home.

ISSUE

The parties stipulated to the following issue:

Was the discharge of the Grievant, Police Officer Roxanne Billips, for just cause?

If not, what is the appropriate remedy?

PRINCIPAL TESTIMONY

City: Detective J ■ V ■ has been involved in drug enforcement dating back before 1997. At the time of this arbitration, Detective V ■ had been assigned to the Dangerous Drugs Unit in the District Attorney's Office for approximately six (6) years. In performing his responsibilities in this capacity, Detective V ■ normally works with a confidential informant ("CI"). The normal protocol is for the CI to arrange to purchase narcotics directly with the target dealer at a pre-arranged time and location. The CI is searched by the controlling police officer to assure that he or she is clean and then provided with marked money and a recording device. The CI proceeds to make the drug buy which is observed from a distance by the police. After completing the buy, the CI returns to the police officer where he/she turns over the purchased narcotics and the recording device and the dealer is arrested.

Detective V ■ was involved in the incidents resulting in the Grievant's discharge. The CI with whom Detective V ■ was working arranged to buy narcotics from an individual named "Dave," an alias for M ■ B ■, the Grievant's oldest son. The initial incident involving the purchase of two grams of cocaine occurred on March 25, 2008, in a Rite-Aide parking lot in Northeast Philadelphia.

The second incident occurred on April 1, 2008. After the sale was completed police officers followed the dealer (M ■ B ■) to a house located at ■ ■ ■ ■ ■ in Philadelphia.

Incident number three occurred on April 14, 2008, in front of the ■ ■ ■ ■ ■ address. M ■ B ■ exited the house and sold narcotics to a CI. After the sale

was completed the CI returned to Detective V [REDACTED] car and M [REDACTED] B [REDACTED] returned to the house, "walking right in."

Incident number four involved a CI and Police Officer Gremlin during which the CI again purchased cocaine from M [REDACTED] B [REDACTED].

Incident number five occurred on April 22, 2008. The CI contacted M [REDACTED] B [REDACTED] and the two arranged to meet in the [REDACTED] block of [REDACTED]. B [REDACTED] arrived in a mini-van and used a key to enter the residence at that address. He shortly returned to the street and sold 2 grams of cocaine to the CI.

The sixth incident involved a CI purchasing cocaine from M [REDACTED] B [REDACTED]. B [REDACTED] arrived at the purchase location as a passenger in a mini-van. After the sale was complete back-up police officers arrested B [REDACTED] based on probable cause. At the time of his arrest B [REDACTED] was searched and the marked "buy money" was found in his possession and a bag of cocaine was found inside the van behind the passenger side visor.

Probable cause warrant #129566 was obtained for [REDACTED] and a search was conducted at which Detective V [REDACTED] was present on April 30, 2008,. During the search the police recovered a 40 caliber Glock handgun under a mattress in a third floor bedroom along with drug packaging materials and rubber bands similar to those used to fasten the drug packages sold to the CI. In a first floor rear porch bags of cocaine were found with an estimated street value of approximately \$1400. The police also confiscated a plate and razors of the type used to cut down cocaine into smaller amounts and a small digital scale of the type used to weigh small amounts of narcotics for sale. Ammunition was also observed and retrieved from atop a shelf in the Kitchen. Police also found a small 30 caliber revolver hidden in the ceiling tiles of the porch. The police also

found a Commonwealth of Pennsylvania identification card listing [REDACTED] as B [REDACTED]' address. Detective V [REDACTED] characterized the Grievant (who arrived at the scene sometime after the execution of the search warrant commenced) as "loud and upset."

A [REDACTED] R [REDACTED] has served as a Philadelphia police officer for approximately thirty years and has been assigned to the District Attorney's Dangerous Drug Offense task force since 1998. He assisted with the investigation of M [REDACTED] B [REDACTED] and observed the drug buy in the Rite-Aide parking lot on March 25, 2008. He observed B [REDACTED] arrive in a Cadillac and sell crack cocaine to a CI.

P/O R [REDACTED] also observed a CI make a drug purchase on April 1, 2008, at the [REDACTED] address. Over the next month P/O R [REDACTED] routinely checked the [REDACTED] address at different times throughout the day. He observed the green Cadillac driven by B [REDACTED] parked at the [REDACTED] address on several occasions.

On April 14, 2008, P/O R [REDACTED] was conducting surveillance at the [REDACTED] address. Early in the afternoon he observed B [REDACTED] exit the residence, make a drug sale to a CI outside the house and return inside the house. P/O Gremlin arrived at the scene with another CI. The CI and B [REDACTED] engaged in a brief discussion at the front door of the house following which B [REDACTED] returned inside the residence. Shortly thereafter, the Grievant exited the residence accompanied by an unidentified male. The two entered a vehicle and drove away. P/O R [REDACTED] checked the license plate on the vehicle and confirmed it was registered to the Grievant.

Within five (5) minutes of the Grievant's departure B [REDACTED] came out of the house and a second drug buy took place. P/O R [REDACTED] testified he observed nothing to indicate the

Grievant was aware that B [REDACTED] was selling drugs from her house or that she was in any way involved in drug trafficking.

P/O G [REDACTED] has been a Philadelphia officer for approximately twenty (20) years. During the period of his employment he has been assigned to the narcotics strike force, the District Attorney's narcotics unit, and is currently assigned to the intense narcotics investigation unit.

On April 14, 2008, he accompanied a CI to [REDACTED] where he parked about four or five car-lengths from that residence. As the CI walked to the house B [REDACTED] came outside and the two engaged in conversation. According to the CI, B [REDACTED] stated he needed more time before making the drug sale and returned inside the house. The Grievant, wearing her police trousers, exited the house with a male companion.. As soon as the Grievant and her companion drove away, B [REDACTED] came out of the house and the drug purchase took place. The CI returned to P/O G [REDACTED]'s location with an "eight ball" (3.5 grams) of crack cocaine and B [REDACTED] went back into the house. P/O G [REDACTED] testified that," B [REDACTED] just walked up the steps and went in. There was no key, he just walked in."

P/O R [REDACTED] participated in the April 30, 2008, search at the [REDACTED] address. In a rear porch behind the kitchen on a shelf above the washer/drier in plain-view was a box of 22 caliber ammunition. Hidden inside a popped ceiling tile was a 38 caliber handgun. From inside tires lying on the floor, the police recovered a clear plastic bag containing ½ ounce of cocaine also in plain sight. In the kitchen there was a plate with cocaine residue and B [REDACTED] Pennsylvania driver's license listing his address as [REDACTED] [REDACTED]. A package of unused mini-bags of the type normally used to package

drugs was also recovered from under the mattress in a third floor bedroom the police recovered a Glock handgun.

The Grievant arrived after the search of the house had commenced. Even though the Grievant's Lieutenant had arranged for the Grievant to go to the house so she was aware of the search, P/O R [REDACTED] described her as hostile and screaming obscenities. She stated that B [REDACTED] no longer lived there but that her the other children would let him in when he stopped by. She also stated words to the effect that, "I worked too hard for what I have. My son isn't taking me down for this bull shit."

During cross examination P/O R [REDACTED] testified that he is 5' 9" tall and could easily reach the shelf over the washer/drier from which the 22 caliber ammunition was recovered. The ammunition was in a box with the word "Remington" clearly visible.

Detective C [REDACTED] C [REDACTED] has been a Philadelphia police officer for approximately eighteen (18) years. He has been assigned to Northeast detectives for approximately the last five years. In June 2008, Detective C [REDACTED] was involved in the investigation of F [REDACTED] M [REDACTED] (also a son of the Grievant) following his arrest for shooting a man identified as H [REDACTED] D [REDACTED] during an altercation on Cheltenham Avenue. At the time, F [REDACTED] purportedly lived a few blocks from the shooting with the Grievant.

A search warrant was obtained for [REDACTED]. The search took place at 2:00 a.m. on June 19, 2008. Because a weapon was involved, SWAT coordinated the search and selected the date and time. P/O C [REDACTED] remained on the first floor during the search. In a china closet about eye level and in plain view he observed a blue Adidas box containing a digital scale and several bags with a white powdery residue inside. In an upstairs bedroom the police recovered several documents relating to the Bureau of Motor

Vehicle Records. When questioned about these documents the Grievant stated that she had taken them to better prepare herself for an inside desk job she was seeking.

Assignment sheets from the 35th District and three pieces of mail addressed to F [REDACTED] M [REDACTED] were also found in the bedroom.

Detective C [REDACTED] described the Grievant, who was present during the search, as boisterous, uncooperative and vulgar. She repeatedly stated that F [REDACTED] M [REDACTED] did not reside at the house. Detective C [REDACTED] summoned the Grievant's Sergeant from the 35th District to come and try to calm her down.

Lieutenant Leonard Logan has been a Philadelphia police officer for approximately 27 year. He has been assigned to the Internal Affairs Division ("IAD") since 2003. After being notified by the District Attorney's Office of the recent activity at [REDACTED], Lieutenant Logan conducted a neighborhood survey in June, 2008. The neighbors with whom he spoke reported heavy narcotics activity at [REDACTED].

During the arbitration hearing Lieutenant Logan documented the criminal history of both M [REDACTED] B [REDACTED] and F [REDACTED] M [REDACTED], including drug-related offenses. Lieutenant Logan checked both B [REDACTED]' and M [REDACTED]'s DMV records which confirmed that on March 28, 2008, M [REDACTED] B [REDACTED] had renewed his driver's license at which time he listed [REDACTED] as his address. F [REDACTED] M [REDACTED]'s DMV record also listed [REDACTED] as his address of record.

Lieutenant Logan testified in some detail concerning the investigation of the Grievant during which the Grievant was interviewed at least four (4) times. The resulting IAD investigation report was introduced into evidence at the arbitration hearing.

Union: R [REDACTED] B [REDACTED], the Grievant's daughter, testified that in April, 2008, she resided at [REDACTED] with her mother and two (2) brothers. Neither M [REDACTED] B [REDACTED] nor F [REDACTED] M [REDACTED] lived at that address. According to this witness both men lived elsewhere in the City with their respective girlfriends. Ms. B [REDACTED] testified that after M [REDACTED]'s prior arrest her mother told him he was not permitted in the house and he never stopped by when the Grievant was home. He would call periodically when the Grievant was at work and stop by to use the bathroom and usually stayed for about an hour or two. Either the witness or one of her two (2) brothers living at the residence usually let him in.

Ms. B [REDACTED] was home when the police searched the house in the middle of the night in June, 2008. She described her mother as cooperative and accused the police of hollering and using profanity. Ms. B [REDACTED] stated that she did not recall ever seeing a blue Adidas shoe box in the china closet. F [REDACTED] was not present at the search because he was "away at the juvenile center." Ms. B [REDACTED] currently resides with her mother on whom she is economically dependant. She is employed in a nursing home as a nursing assistant.

The Grievant testified that since approximately 2005 (when M [REDACTED] B [REDACTED] was arrested for his involvement with illegal drugs) he has not been allowed in her house. She claimed she had no knowledge of the items which the police confiscated during their search of her residence in April, 2008, including the Adidas shoe box in the china closet. She claimed that F [REDACTED] M [REDACTED] was not residing at [REDACTED] and had not done so since he turned eighteen in March, 2008, after which she was no longer responsible for him as a minor.

The Grievant denied that she was boisterous or uncooperative during either of the searches of her house in April and June, 2008. She acknowledged that as a police officer she had been trained to detect criminal activity including drug activity and drug paraphernalia. In 2008 she learned of M [REDACTED]'s criminal activity and was aware of F [REDACTED]'s criminal record which began while he was a teenager living at home.

SUMMARY POSITIONS OF THE PARTIES

City: The evidence establishes beyond question that the Grievant's oldest son, M [REDACTED] B [REDACTED], sold drugs out of her residence. Her house was frequently under surveillance and numerous drug buys by a CI were observed and documented by the police. When her home was searched the police observed and confiscated drugs and drug-related items including a bag containing 14 grams of cocaine in plain view and a plastic bag with crack cocaine residue on the inside. Drug paraphernalia customarily used to cut and deliver drugs was found inside the house six weeks later. M [REDACTED] B [REDACTED]'s driver's license listing [REDACTED] as his residence was found inside the house.

The police witnesses testified that following a drug buy M [REDACTED] B [REDACTED] was observed returning inside the house using a key. On another occasion he simply walked right in. On yet another occasion the Grievant was observed exiting the house a short time after a drug buy and minutes before a second drug buy occurred.

Compared to the police officers' testimony concerning the Grievant's conduct during the searches of her house, the City characterized the testimony of the Grievant's daughter, who lives at home and acknowledged being economically dependant on her mother, as simply not credible.

Another of the Grievant's sons, F [REDACTED], assaulted his girlfriend near the residence and shot another person in the arm who was present at the time. The City argues that, at best, the Grievant was "willfully blind" to the ongoing criminal activity of her sons at her residence. Based upon the evidence of record, to conclude that the Grievant was unaware of the criminal activity going on around her would be nonsensical.

The Grievant is a police officer in a major city experiencing significant drug-related activity. Her neighbors were aware of the drug sales at her residence. The circumstances at [REDACTED] serve only to convey a message to the public that the police are corrupt and look the other way when their families are involved.

FOP: The FOP does not dispute the underlying material facts but argues that this is a classic case of guilt by association that does not establish a violation of the cited Disciplinary Regulations. There is no evidence, nor does the City contend, that the Grievant was involved in illegal narcotics activity. Nor was she charged with failing to take police action. Similarly, there is no credible evidence that M [REDACTED] B [REDACTED] lived at the [REDACTED] residence, the primary basis for the charge of lying by the Grievant. So too, there is no evidence establishing that the Grievant engaged in business transactions with criminals or involving illegal activities.

Unfortunately, argues the Union, "you can't pick your family." Here, the Grievant took reasonable steps to distance herself from her wayward sons. Even if accepted, the evidence put forth by the City does not establish the required nexus between a police officer's actions and a conflict with his/her official responsibilities.

DISCUSSION

The concept of just cause consists of two (2) essential elements: 1) an underlying incident or incidents; and 2) an appropriate level of discipline when considering all of the attendant relevant circumstances. The Employer has the burden of proving both elements. The severity and far-reaching consequence of discharge requires that both elements be proven by clear and convincing evidence which, in this case, the Employer has accomplished.

The first charge supporting the Grievant's discharge for Conduct Unbecoming an Officer is that she made a false statement during an official Department investigation. It is undisputed that the Grievant is the owner of the residence located at [REDACTED] [REDACTED] where she resides with her husband, daughter and two (2) younger sons. During the course of several interviews with the IAD, the Grievant stated that her oldest son, M [REDACTED] B [REDACTED], did not live at [REDACTED] during the relevant time period, that he did not have free access to the residence nor was he in possession of a key to the residence.

The evidence is to the contrary. While it may be that Mr. B [REDACTED] did not physically reside at the [REDACTED] address on a full-time basis, permanent physical occupancy is not the only standard to be considered in determining where an individual lives. Many individuals occupy more than one residence. Here, the totality of the circumstances establishes that M [REDACTED] B [REDACTED] had free and frequent access to the residence which he regularly used in making drug sales.

Despite the Grievant's denials, the credible testimony of the police officers who testified corroborating documentary evidence was that B [REDACTED] was observed on at least one (1) occasion by the police enter the residence using a key. On other multiple

occasions he freely entered the house without knocking. He often remained at the house for up to an hour or more. He used the bathroom and was free to eat or nap if he so desired. He routinely used the Grievant's car when he desired. [REDACTED] was listed as his residence on his Pennsylvania driver's license and was his address of record with the DMV.

The Grievant either knew or reasonably should have known of the Grievant's access to and use of the premises which was apparently limited only by her presence. Even her presence was not always a limiting factor (as evidenced by the testimony of Police Officer R [REDACTED]). Yet, there is no evidence, indeed no claim, that she ever confirmed from the other children living at the house that B [REDACTED] was spending time there against her orders.

Considered within the totality of the circumstances, while the charged violation of Disciplinary Regulation 1.12 is certainly neither the sole nor even the primary reason for the Grievant's discharge, it has been established to my satisfaction.

The second alleged violation contributing to the Grievant's discharge for Conduct Unbecoming an Officer, is Disciplinary Regulation 1.25, which provides, "Knowingly associates, fraternizes or conducts business transactions at any time, or in any manner whatsoever, with known criminals or persons engaged in unlawful activities." The intent of this regulation is readily apparent, that being to prevent conduct by a police officer which would discredit and impugn the integrity of Police Department or its officers thereby diminishing public trust and confidence.

The Union does not contest the City's contention that a serious drug problem exists within the City. Notably, the essence of this case goes directly to this

acknowledged problem. Although the Grievant is not charged with engaging in any illegal activity, the evidence establishes a nexus between the on-going illegal activity at her residence and her responsibilities as a police officer.

The Grievant was aware of her sons' prior criminal records including illegal narcotics trafficking. Both the Grievant's husband as well as her neighbors were aware of the on-going narcotics activity emanating from her residence. In this instance, a narrow consideration and application of Regulation 1.25 would not justify the Grievant's discharge. However, considered within the broader scope of the overriding purpose of Regulation 1.25, including it as a reason contributing to her discharge is supported by the record.

The third alleged violation contributing to the Grievant's discharge for Conduct Unbecoming an Officer is Regulation 1.75, of the Disciplinary Code, which provides, "Repeated violations of Departmental rules and regulations, and/or any other course of conduct indicating that a member has little or no regard for his/her responsibility as a member of the Police Department."

The Grievant's claim that she was unaware of any suspicious or questionable activity involving her residence is simply not credible. Police Officer R [REDACTED] credibly testified that while on surveillance he observed the Grievant exit the house accompanied by a male companion shortly after B [REDACTED] had exited the house to sell drugs. His testimony establishes that the Grievant and B [REDACTED] have been in the house at the same time.

On two (2) separate occasions approximately one (1) month apart, police recovered drugs, drug paraphernalia and weapons inside the house, that in some cases in

were in plain view. The Grievant was trained to recognize illegal or suspicious criminal activity. Both the Grievant's husband and several neighbors were aware of the ongoing drug activity at the [REDACTED] address. To accept the Grievant's contention that she was totally unaware of the obvious signs of compromising and suspicious activity inside and around her house is neither consistent with nor supported by the evidence. Her failure to take steps to investigate the obvious or to initiate corrective action constitute a course of conduct indicating that she has little or no regard for her responsibility as a police officer.

DECISION

The discharge of the Grievant, Police Officer Roxanne Billips, was for just cause.

Accordingly, the grievance is denied.

January 5, 2012

(Date)

Charles D. Long, Jr.

Charles D. Long, Jr., Esquire
Arbitrator